



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2021

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.200 of 2018

&

C.M.P.No.2407 of 2018

The Divisional Manager,
United India Insurance Co.Ltd.,
D.O.13A, Nethaji Road,
Cuddalore-1.

...Appellant/2nd Respondent

Vs

1.S.Valarmathi

..1st Respondent/Petitioner

2.R.Ezhumalai
(2nd respondent remained exparte
in the lower Court)

...2nd Respondents/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the award and decree dated 04.06.2016 passed in M.C.O.P.No.1147 of 2012 by the 1st Additional District Judge, Motor Accidents Claims Tribunal, Cuddalore.

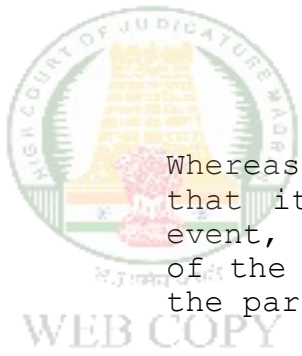
For Appellant : Mrs.R.Rathina Thara
For Respondents : Mr.R.Sreedhar for R1
R2-Ex-parte

JUDGMENT

This appeal is filed by the Insurance Company assailing the award passed by the Tribunal directing the appellant/Insurance Company to pay Rs.1,25,000/- as compensation to the claimant along with 7.5% interest.

2. Heard the learned counsel for the appellant and the learned counsel for the first respondent.

3. The short point involved in this appeal and canvassed before this Court is that, the claimant has preferred the claim petition under Section 163 A of the Motor Vehicles Act, alleging that the motorcyclist, who drove the TVS XL Super bearing registration No.PY 01 AQ 8120 in which, the claimant was travelling as a pillion rider, due to negligence, dashed against the other motorcycle, in which, the claimant sustained injury.



Whereas, in the First Information Report, it has been stated that it was hit and run vehicle caused the accident. In any event, the claimant has filed the petition under Section 163 A of the Motor Vehicles Act without adverting any negligence on the part of the offending vehicle.

4. The Tribunal, on considering the disability certificate, which has been assessed at 40% partial permanent disability and the medical expenses incurred, had awarded a sum of Rs.1.25,000/- as against the claim of Rs.3,00,000/-.

5. The learned counsel for the appellant pointing out the provisions of Section 163 A of Motor Vehicles Act, which imposes the twin conditions for the claimant to comply, namely, the annual income of the claimant must be Rs.40,000/- and the injury sustained must be a permanent disability. As far as the case in hand is concerned, the claimant has stated that his monthly income is Rs.7,500/- and the injury sustained is only partial permanent disability, which does not fall under the specifications mentioned under Section 163 A of the Motor Vehicles Act, 1988.

6. The learned counsel for the appellant referring Section 140 of the Motor Vehicles Act, which deals with no fault liability and Section 161 of the Motor Vehicles Act, which provides special provisions for compensation as the case of hit and run, would submit that the claimant, who has sustained injury due to accident caused by a known vehicle and claim to earn about Rs.40,000/- per annum is entitled for compensation only under Section 140 of the Motor Vehicles Act or under Section 161 of the Act.

7. On perusing the provisions of Motor Vehicles Act, Section 140, 161 and 163 A, this Court is in agreement with the submissions made by the learned counsel for the appellant, since the income of the appellant exceeds the maximum prescribed under Section 163 A of the Act, however, he is not entitled to file a petition under Section 163 A of M.V.Act. As far as Section 140 of Motor Vehicles Act, he is entitled to get Rs.25,000/- as no fault liability. Since the vehicle is insured with the appellant Corporation, the owner of the vehicle shall be indemnified by the Insurance Company.

8. Accordingly, the award of the Tribunal is modified and reduced to Rs.25,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The said amount shall be deposited to the credit of M.C.O.P.No.1147 of 2012 on the file of 1st Additional District Judge, Motor Accidents Claims Tribunal, Cuddalore, within a period of eight weeks from the date of receipt of a copy of this judgment.



9. The learned counsel for the appellant says that the award amount has already been deposited in the M.C.O.P.No.1147 of 2012 account. If so, the award as modified by this Court in C.M.A., with accrued interest shall be withdrawn by the claimant/1st respondent after defraying if any excess amount available in the M.C.O.P.No.1147 of 2012 account, the appellant/Insurance Company is permitted to withdraw the same on filing appropriate petition.

10. In the result, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is also closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

rpl
To

1.The 1st Additional District Judge,
Motor Accidents Claims Tribunal, Cuddalore.

Copy to
The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mrs.R. Rathna Thara, Advocate sr 10062.

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CA(CO)
SP(06/09/2021)